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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Price Cap Performance Review	)	CC Docket No. 94-1
for Local Exchange Carriers;	)	
Treatment of Video Dialtone Services	)	
Under Price Cap Regulation	)	

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NYNEX REPLY COMMENTS

I. INTRODUCTION

The NYNEX Telephone Companies ("NYNEX")[1] submit these Reply Comments to parties' comments filed October 27, 1995, in the above-captioned matter. We address parties' contentions relative to: determining the threshold at which video dialtone ("VDT") costs and revenues will be removed from sharing/low-end adjustment calculations (Point II); and approaches to apportioning costs to the VDT basket if and when the threshold is reached (Point III).

II. THE COMMISSION SHOULD REJECT ARGUMENTS FOR ELIMINATING OR MINIMIZING THE THRESHOLD

Several parties oppose any threshold.[2] However, the Commission has already decided there will be a threshold -- the only issues are the amount of that threshold and the approach to cost allocation.[3] Therefore, those parties' opposition should be rejected as a misplaced request for FCC reconsideration.

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1 The NYNEX Telephone Companies are New England Telephone and Telegraph Company and New York Telephone Company.

2 CCTA 3, Comcast 7, MCI 5.

3 See CC Docket No. 94-1, Second Report and Order ("2d R&O") and Third Further Notice of Proposed Rulemaking ("3d FNPRM") released September 21, 1995, ¶ 1.

Various parties argue that any threshold should be quite small;[4] indeed, GSA (at p. 3) goes so far as to suggest a $500 threshold. Some of these parties express concern over potential cross-subsidy of VDT costs by the telephone ratepayer.[5] These parties' arguments are baseless. The Commission previously held that its price cap new services test applies to VDT.[6] That test guards against cross-subsidy of VDT by requiring that VDT tariff rates cover not only all VDT incremental costs, but also a reasonable allocation of common and overhead costs.[7] Moreover, as the Commission previously found, the "existing rules adequately protect consumers against improper cross-subsidy and anti-competitive activity."[8]

Furthermore, establishing a smaller threshold than proposed by NYNEX[9] would work against the Commission's goals by: increasing administrative burdens, making virtually all VDT projects subject to additional regulatory requirements; and discouraging VDT testing and experimentation on a small scale.

A number of commentors maintain that computation of the threshold amount should also include VDT shared investment.[10] This argument is unpersuasive. First, use of dedicated VDT investment in determining the threshold is reasonable since such investment amounts under RAO Letter 25[11] will be readily obtainable with a minimum

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4 See AT&T 3, GSA 3, MCI 6, NCTA 7-9.

5 E.g., CCTA 3-4, Comcast 7, MCI 5.

6 Telephone Company-Cable Television Cross-Ownership Rules, CC Docket No. 87-266, 10 FCC Rcd. 244 (1994) ("VDT Recon. Order"), ¶ 214.

7 Id. at ¶¶ 217-20.

8 Id. at ¶ 166.

9 In initial Comments we justified a threshold no lower than the amount of dedicated interstate VDT investment that would reduce the LEC overall interstate rate of return by 25 basis points. NYNEX 2-3.

10 AT&T 4, CCTA 3, Comcast 7-8, GSA 5, NCTA 7-9.

11 10 FCC Rcd. 6008 (1995)(CCB).

of potential controversy from the LECs' ARMIS fourth quarter report on VDT.[12] Second, with respect to shared VDT investment, there probably will be different cost allocation methodologies among LECs reflecting different ways of providing VDT,[13] giving rise to potentially more controversy and administrative effort. Third, the amount of dedicated VDT investment is a reasonable barometer of how significant a business undertaking VDT is for the LEC; the Commission should invoke its regulatory processes here only in the case of significant VDT activities.

Finally, NYNEX supports BellSouth's and Southwestern Bell's position that VDT trials should not be included in calculating the threshold.[14] As BellSouth indicates, the limited nature of trials and the conditions associated with the Commission's grant of Section 214 authorizations -- i.e., exclusion of trial costs from regulated revenue requirements absent FCC approval -- alleviate any concerns regarding cross-subsidy.[15]

III. THE COMMISSION SHOULD REJECT PROPOSALS FOR FULLY DISTRIBUTED COSTING AND WHOLESALE RULE CHANGES IN CALCULATING VDT COSTS TO BE EXCLUDED FOR SHARING/ LOW-END ADJUSTMENT PURPOSES

A. New Services Test

Certain parties oppose the use of the FCC's price cap new services test in determining VDT costs to be removed from sharing/low-end adjustment calculations.[16] Some of these commentors assert that the new services test does not require fully

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12 See Reporting Requirements On Video Dialtone Costs And Jurisdictional Separations For Local Exchange Carriers Offering Video Dialtone Services, DA 95-2036, AAD No. 95-59 (1995)(CCB) ("AAD 95-59 Order").

13 See Bell Atlantic Telephone Companies Transmittal Nos. 741, 786, Order released June 9, 1995 (CCB), ¶ 16.

14 BellSouth 2-3, Southwestern Bell 9.

15 See BellSouth 2-3.

16 AT&T 7-8, GSA 8, MCI 6-7, NCTA 5-6.

distributed costing and is therefore inappropriate for pricing and cost allocation.[17] These parties' contentions should be rejected. As noted earlier, the Commission has already decided that the new services test applies to VDT pricing.[18] Further, it must be remembered that the purpose of excluding VDT costs from sharing/low-end adjustment calculations is to address the Commission's "concern regarding the possibility of cross-subsidization of LEC video dialtone service."[19] The use of fully distributed costing is not necessary to alleviate this concern. The new services test requires VDT rates to cover allocated common and overhead costs above and beyond VDT incremental costs, and therefore more than ensures against cross-subsidy of VDT.[20] To the same effect, use of the new services test in the present sharing/low-end adjustment context more than ensures against potential cross-subsidy of VDT.

AT&T states that using the new services test will result in the application of a non-usage based, fixed allocation factor.[21] AT&T is mistaken. The NYNEX proposal (and, we believe, the FCC's suggested option) is to use the new services test

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17 See GSA 8, MCI 6-7, NCTA 5-6.

18 NCTA states (at p. 5) that the costs allocated to VDT pursuant to the Part 32 process should become the basis for tariffed prices. Aside from being contrary to the new services test, NCTA's position belies its desire for an artificially high VDT "umbrella" price that NCTA's members can undercut. Curiously, at the same time cable interests are clamoring for VDT over-regulation in this and other matters, the Commission is proposing to waive rate regulation rules for cable operators in Dover Township, New Jersey, where Bell Atlantic plans to initiate commercial VDT service. See Waiver Of The Commission's Rules Regulating Rates For Cable Services, CUID Nos. NJ0213, NJ0160, Order Requesting Comments, released November 6, 1995. The Commission should strive for symmetrical treatment of competitive VDT and cable offerings.

19 2d R&O at ¶ 35. Contrary to MCI's suggestion (at p. 4), the Commission has not sought to use this process to confer additional benefits on the telephone ratepayers as a result of provision of regulated VDT service, unlike the Part 64 context where the Commission has required nonregulated activities to bear fully distributed costs and other burdens which benefit ratepayers. See 47 C.F.R. Section 64.901; Separation Of Costs, CC Docket No. 86-111, 2 FCC Rcd. 1298 (1987), ¶¶ 109, 169-72. In fact, the Commission expressed concern in the VDT Recon. Order (at ¶ 220) that VDT be a successful service not "saddled" with uneconomic cost allocations.

20 VDT Recon. Order at ¶¶ 217-19.

21 AT&T 8-9.

methodology for the purpose of removing VDT costs and revenues from sharing and low-end adjustment calculations if and when the de minimis threshold is exceeded. AT&T wrongly assumes that a LEC would use the cost information submitted with initial VDT tariff filings. That cost information does not reflect historical, actually incurred costs, but represents projected VDT costs under average conditions for the tariff period. Under NYNEX's proposal, the new services test methodology will be applied to VDT ARMIS report actual cost data to determine VDT costs to be subtracted from access results.

B. Rule Changes And Cost Allocation

Some commentors offer proposals involving wholesale rule changes or baseless interpretations of Parts 64, 36 and 69 of the FCC's rules (47 C.F.R. Parts 64, 36, 69). As shown below, such proposals should not be adopted. It bears emphasis that the FCC has previously rejected requests for adoption of video dialtone-specific accounting, cost allocation, separations and pricing rules.[22]

With respect to the Commission's Part 64 rules (segregation of nonregulated from regulated costs), Comcast asserts that "the Commission must amend its Part 64 cost allocation rules to include procedures for separating video costs from telephone costs."[23] Comcast's request is beyond the scope of this matter and amounts to an unauthorized request for reconsideration. The Commission has already decided that the VDT services at issue are regulated.[24] Therefore, those VDT services are not subject to Part 64.[25] Also,

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[22] VDT Recon. Order at ¶ 169.

[23] Comcast 5. See also GSA 8.

[24] See VDT Recon. Order at ¶¶ 25, 30-31, 95.

[25] See VDT Recon. Order, at ¶ 180; 47 C.F.R. Sections 64.901, 32.23.

the Commission has determined that any nonregulated services to be offered in conjunction with VDT are adequately covered by existing Part 64 rules.[26]

Regarding the Part 36 jurisdictional separations rules, Comcast asserts that unless the separation of telephone and video costs takes place before the jurisdictional separations process (i.e., under Part 64, as described above), then the intrastate jurisdiction will be unfairly burdened with VDT costs.[27] Comcast goes on to state that Part 36 rules require allocation of Cable and Wire Facilities costs associated with VDT based upon conductor cross-section or bandwidth.[28] For its part, AT&T states that VDT may warrant a special Part 36 category.[29]

These parties' arguments for Part 36 changes are misplaced and should not be adopted. In the VDT Recon. Order, the Commission held that VDT costs should be jurisdictionally separated based upon existing Part 36 rules; and directed the Common Carrier Bureau to monitor the impact of VDT on separations results and on intrastate local telephone rates, and report its findings periodically to the Commission. The Commission stated: "This course of action will provide us and state regulators with the practical experience and the data necessary to make appropriate decisions concerning the future of the Part 36 rules."[30]

Pursuant to this FCC direction, the Bureau's AAD 95-59 Order has required each LEC that has received Section 214 authorization to provide VDT, to include in its VDT ARMIS quarterly report "a detailed explanation of how it is applying the Part 36 rules to

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[26] VDT Recon. Order at ¶¶ 179-82.

[27] Comcast 2.

[28] Comcast 6. See also GSA 6-7.

[29] AT&T 8.

[30] VDT Recon. Order at ¶ 186.

VDT costs and revenues."[31] Furthermore, the Commission has announced its intention to open an inquiry proceeding focusing on the implications for the jurisdictional separations process of the introduction of new technologies, including broadband.[32]

Comcast's and GSA's contentions on Part 36 requirements regarding Cable and Wire Facilities (C&WF) costs are not only misplaced, but show a misunderstanding of the separations process. FCC Rule 36.153(a)(1)(i)(A) provides for attribution of C&WF costs to the various categories based on "number of pairs in use or reserved," i.e. actual use. NYNEX will provide an electrical path for each service connection, whether for VDT or telephony. The electrical equivalent of "pairs in use" in the integrated fiber/coaxial broadband network proposed by NYNEX is a service connection. Accordingly, NYNEX plans to allocate C&WF costs shared by VDT and telephony based upon relative number of service connections. NYNEX's approach to apportioning C&WF costs is reasonable and consistent with the Part 36 rules. On the other hand, the use of cross-section or bandwidth allocators, as urged by Comcast and GSA, is not relevant in the fiber/coaxial network because all circuits are derived electronically by equipment at the end of each facility.

With respect to the FCC Part 69 rules (access charge cost allocations and rate structure), MCI reiterates its prior argument that a separate Part 69 element is required for VDT.[33] Here again, MCI offers an unauthorized request for reconsideration of a prior FCC decision. In the VDT Recon. Order, the FCC held that VDT is part of switched

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[31] AAD 95-59 Order at ¶ 20. GSA states that the Commission must revise the VDT ARMIS report (43-01), adopted in the AAD 95-59 Order, to include a separate column for interstate VDT. GSA 4. This proposal for an additional VDT regulatory requirement should be dismissed as an unauthorized request for reconsideration.

[32] VDT Recon. Order at ¶ 190.

[33] MCI 6-7. See also GSA 7.

access and rejected arguments for a separate VDT rate element.[34] The Commission also observed: "We view the price cap regulatory regime, and not the Part 36/Part 69 cost allocation scheme, as our primary means of protecting the telephone consumers of price cap LECs from unreasonably high rates."[35]

Finally, CCTA argues that any cost allocation process for VDT should treat telephony as incremental to VDT.[36] The Commission should reject this broadbrush argument. Since carriers' VDT service features and network architectures will vary, carriers may properly utilize different cost allocation methodologies respecting VDT shared costs and overheads. Given this reasonable potential variation, the Commission has identified the tariff review process for individual LECs as the appropriate vehicle for specifically addressing such matters.[37] For similar reasons, MCI's suggestion (at p. 7) for a 50% fixed allocation factor to divide common costs between VDT and telephony should be rejected. MCI's suggestion fails to reflect LEC differences, and would arbitrarily penalize VDT.[38] MCI's assumption that there will be two loops -- telephony and broadband -- is simplistic and wrong. Broadband represents a technology that will support a variety of future services including VDT and telephony. In large measure, these services cannot yet be specifically identified.

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34 VDT Recon. Order at ¶¶ 195-99.

35 VDT Recon. Order at ¶ 166.

36 CCTA 16-17.

37 See VDT Recon. Order at ¶ 214; Bell Atlantic Telephone Companies, supra, ¶¶ 15-16; NYNEX VDT Section 214 Application (Mass. & R.I.), W-P-C-6982-83, Order and Authorization released March 6, 1995, ¶¶ 68-69, 73, 80. CCTA also states that LECs should be required to maintain subsidiary records on the costs for retirements of transmission facilities in VDT service areas. CCTA 13. CCTA's proposal, which would add to burdensome regulation, is outside the scope of this matter and should be rejected.

38 MCI's statement (at p. 7) that "the dollars LECs use to finance video dialtone systems are generated from telephone ratepayers" is incorrect and misleading. Of course, the Commission has in place adequate safeguards against cross-subsidy of VDT. Also, MCI fails to recognize the fact that the original source of funds for VDT investments is investor-supplied capital.

IV. CONCLUSION

For the reasons stated, the Commission should reject arguments that would eliminate or minimize the threshold for removing video dialtone costs and revenues from access earnings for purposes of applying the sharing and low-end adjustment mechanisms. The Commission should also deny requests for applying fully distributing costing to VDT, and reject parties' various misplaced and baseless proposals that would increase the regulatory burdens applying to VDT.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that copies of the foregoing **NYNEX REPLY COMMENTS** were served on each of the parties listed on the attached Service List, this 20th day of November, 1995, by first class United States mail, postage prepaid.

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